

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
	:	
of	:	
	:	
YVONNE S. BROWN	:	DETERMINATION
	:	DTA NO. 820140
for Redetermination of a Deficiency or for Refund of New	:	
York State Personal Income Tax under Article 22 of the	:	
Tax Law for the Year 2002.	:	

Petitioner, Yvonne S. Brown, 4350 Furman Avenue, Apt. #2A, Bronx, New York 10466, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 2002.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 90 South Ridge Street, Rye Brook, New York on December 15, 2004 at 1:15 P.M. Petitioner appeared by Alfred E. Simms, CPA. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Lawrence Hallock and Ines Ottaviano).

Since neither party reserved time to submit a post hearing brief, the three-month period for the issuance of this determination commenced as of the date the hearing was held.

ISSUE

Whether the Division of Taxation properly disallowed \$286.25 of petitioner's claimed \$1,081.00 earned income credit on the basis that she failed to substantiate a portion of the earned income she reported as received during the 2002 tax year.

FINDINGS OF FACT

1. On or before February 2, 2003, petitioner, Yvonne S. Brown, filed with the Division of Taxation (“Division”) a New York State and City resident income tax return for the 2002 tax year. On her return, petitioner reported New York adjusted gross income of \$9,822.00, which amount consisted of \$10,569.00 of business income less a \$747.00 adjustment to income for one-half of her Federal self-employment tax. After subtracting \$10,500.00 for the standard deduction and \$2,000.00 for two dependent exemptions, there remained no taxable income and thus no State or City tax due. Petitioner’s return claimed a refund of \$1,144.00, which amount included \$1,081.00 for the New York State earned income credit and \$63.00 for the City of New York school tax credit.

2. During the 2002 tax year, petitioner conducted a day care business as a sole proprietor from her apartment at 4350 Furman Avenue, Apt. #2A, Bronx, New York. Petitioner’s Federal Schedule C, Profit or Loss from Business, reported the following income and expenses:

ITEM	AMOUNT
Gross receipts from business	\$14,800.00
Less: legal & professional services	-275.00
office expenses	-110.00
other expenses	-3,846.00
Net profit from business	\$10,569.00

3. Pursuant to a letter dated February 28, 2003, the Division requested that petitioner substantiate both her reported business income and that she had two qualifying dependents for earned income credit purposes. Although petitioner responded to the Division’s request for information, the Division found such response inadequate to prove her receipt of earned income

during the 2002 tax year. Accordingly, on September 26, 2003, the Division sent a Notice of Disallowance to petitioner advising her that the New York State earned income credit of \$1,081.00 claimed on her 2002 income tax return was denied.¹

4. Petitioner protested the denial of her claimed earned income credit by filing a Request for Conciliation Conference with the Division's Bureau of Mediation and Conciliation Services ("BCMS"). As the result of a conciliation conference held on March 31, 2004, the Division, based on affidavits and a review of the cash receipt statements petitioner gave to her customers, accepted that petitioner received \$11,960.00 of income from Yvonne Aldridge, Ingrid Keating and Venice Redwood for providing day care services during the 2002 tax year. While an affidavit and cash receipt statements were also submitted for one Shirley Lewis, the Division did not accept that petitioner had received earned income from Ms. Lewis in 2002 because it was unable to verify that Ms. Lewis had filed a 2002 tax return reporting income or that she had the financial resources to make payments to petitioner.

5. On June 11, 2004, BCMS issued a Conciliation Order to petitioner allowing her an earned income credit of \$794.75, which amount was computed based on a gross earned income figure of \$11,960.00. The Conciliation Order did not include the earned income claimed to have been received by petitioner from Ms. Lewis in the calculation of the earned income credit, and it therefore disallowed the remainder of the claimed credit in the amount of \$286.25. Petitioner contested the Conciliation Order by filing a petition with the Division of Tax Appeals and this proceeding ensued.

¹ The Division, on May 27, 2003, refunded to petitioner the City of New York school tax credit as claimed on her return, and therefore this item is not at issue in this proceeding.

6. For the 2002 tax year, petitioner maintained a complete set of cash receipts statements detailing the weekly cash payments she received from Yvonne Aldridge, Ingrid Keating, Venice Redwood and Shirley Lewis for providing day care services. Petitioner also submitted invoices and receipts to document the \$4,231.00 of business expenses she claimed on Federal Schedule C, Profit or Loss from Business, and she also submitted evidence to prove that she had two qualifying dependents for earned income credit purposes. Petitioner also made quarterly estimated tax payments of \$150.00 to the Internal Revenue Service for the 2002 tax year to satisfy any potential Federal income tax liability from her day care activities.

7. Petitioner was unable to provide the Division with a social security number or tax identification number for Shirley Lewis since she was an undocumented alien and therefore she did not possess either of these numbers. Petitioner did submit a copy of a Certificate of Birth which verified that Ms. Lewis gave birth to one Orlando Vernon Miller on December 22, 1994.

SUMMARY OF THE PARTIES' POSITIONS

8. The Division argues that the computation of petitioner's allowable earned income credit for 2002 should not include the \$4,420.00 she allegedly received in cash for day care services provided to Ms. Lewis since it was unable to verify that Ms. Lewis had filed an income tax return for 2002, that she was in any way gainfully employed or that she had the financial ability to make child care payments totaling \$4,420.00.

9. Petitioner asserts that she has submitted sufficient books and records to document her receipt of \$4,420.00 of gross income from Ms. Lewis for day care services provided during the 2002 tax year. Petitioner maintains that whether or not Ms. Lewis is in compliance with the Tax Law should be of no consequence to her and should not negatively affect the computation of her allowable earned income credit for 2002.

CONCLUSIONS OF LAW

A. As applicable to this proceeding, Tax Law § 606(d) provides that the New York State earned income credit for the 2002 tax year is equal to twenty seven and one-half percent “of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . . .” Since the State earned income credit is determined based solely on a percentage of the Federal credit, it is appropriate to refer to the provisions of the Internal Revenue Code (“IRC”) and Federal case law to determine petitioner’s eligibility for the earned income credit.

B. The Federal earned income credit, provided for pursuant to IRC § 32, is a refundable tax credit for eligible low-income workers. The credit is computed based on a determination of a taxpayer’s “earned income” which includes, *inter alia*, wage income and earnings from self-employment (IRC § 32[c][2]). The only issue to be addressed herein is whether petitioner has sustained her burden of proof (Tax Law § 689[e]) to show that she received \$4,420.00 of earned income from Ms. Lewis during the 2002 tax year.

C. In the instant matter, petitioner has adduced sufficient documentary evidence to prove that she provided day care services to Ms. Lewis during the 2002 tax year and that she received \$4,420.00 of earned income for these services. The fact that the Division could not verify Ms. Lewis’ tax filing status or that she possessed the financial ability to pay \$4,420.00 for day care services is outweighed by the fact that petitioner maintained books and records which adequately portrayed the income and expenses generated from her day care business. In accordance with the cash receipt statements and summary schedules provided at the small claims hearing, petitioner’s gross receipts from her day care activities total \$16,080.00 for the 2002 tax year.

After deducting expenses of \$4,231.00, petitioner's net profit from her day care business totals \$11,849.00.

D. The petition of Yvonne S. Brown is granted to the extent indicated in Conclusion of Law "C"; the Division is hereby directed to recompute petitioner's earned income credit for the 2002 tax year using a net earned income figure of \$11,849.00 and refund to petitioner the resulting overpayment together with such interest as allowed by statute and, except as so granted, the petition is in all other respects denied.

DATED: Troy, New York
March 3, 2005

/s/ James Hoefer
PRESIDING OFFICER